A

VKR v NNT

B HIGH COURT (JOHOR BAHRU) — DIVORCE PETITION NO JA-33–310–08 OF 2020
EVROL MARIETTE PETERS JC
10 MARCH 2022

C *Family Law — Divorce — Petition — Cross-petition — Whether there was irretrievable breakdown of marriage — Whether the parties had fulfilled the two-year requirement of living apart — Whether the petitioner had deserted the respondent – Whether non-consummation amounted to unreasonable behaviour — Whether the respondent was entitled to maintenance — Whether the respondent was entitled to damages — Law Reform (Marriage and Divorce) Act 1976 ss 54(1)(d) & 77–78*

D

This was a petition ('the petition') and cross-petition ('the cross-petition') filed respectively by the petitioner husband and respondent wife to dissolve the marriage between the parties. The petition was filed on the basis that the parties had lived apart for a continuous period of at least two years immediately prior to the filing of the petition, whilst the cross-petition was filed on the ground of the petitioner's alleged unreasonable behaviour. The petitioner, an engineer, and respondent, a doctor, had their marriage solemnised on 26 June 2015 and started living together sometime in February 2016, after they had undergone their Hindu customary wedding ceremony. There were no children in the marriage. On 25 October 2017, the petitioner moved out of their matrimonial home, which was a rented apartment in Johor Bahru, and filed for divorce in November 2019. The respondent then filed the cross-petition in September 2020. The issues in these petitions were: (a) whether the parties had fulfilled the two-year requirement of living apart; (b) whether the petitioner had deserted the respondent; (c) whether non-consummation amounted to unreasonable behaviour; (d) whether the respondent was entitled to maintenance; and (e) whether the respondent was entitled to damages.

E

F

G

H

Held, allowing the petition and dismissing the cross-petition with costs:

(1) In the court's view, especially after having perused the 800 pages of WhatsApp messages between the parties, and the numerous times the respondent herself had raised the topic of divorce, her contention on desertion was untenable. The messages between the parties also indicated that most of the arguments were initiated by the respondent herself. Considering the circumstances in which the petitioner had left, coupled with the fact that the marriage had not been consummated, there could

I

not have been desertion by the petitioner. In fact, if at all, there was constructive desertion by the respondent, that led to the breakdown of the marriage. (see paras 14–15).

(2) The WhatsApp messages between the parties indicated that it was the respondent who had refused any form of intimacy with the petitioner. Furthermore, during cross-examination, she had admitted that the non-consummation was due to her refusal, emanating from a condition known as dyspareunia, that she claimed she had suffered from, and was therefore afraid to engage in sexual intercourse. This revelation of her condition was not only not pleaded and not proved, it was a contradiction of what she had maintained all along it was the petitioner who had refused to consummate the marriage. It was obvious that it was not open for the respondent to rely on non-consummation as a ground to annul the marriage because the refusal to do so was on her part, and not the petitioner's (see paras 22–23 & 25).

(3) The parties had lived together for one year and eight months only. The marriage had not been consummated and as such, did not produce any children. The parties had shared costs and expenses during the marriage and there was no evidence that the respondent was financially dependent on the petitioner. The respondent was a doctor, gainfully employed and had been financially independent even before the marriage. Therefore, the application for maintenance was dismissed (see paras 28–29).

(4) In the case of costs and expenses for the engagement ceremony, there was no basis for such claim, as there was no breach of promise to marry, as the engagement had led eventually to the marriage. With regard to the costs and expenses for the wedding ceremony, it was pertinent to note that except for cases involving adultery, the Law Reform Act did not provide for any form of damages, whether special or general. There was no legal requirement for parties to have a wedding ceremony, be it religious or customary. Any expenses borne for a ceremony should be considered a gift to the marriage, which means to both parties. As such, the court was not in a position to order any party to reimburse the other for costs and expense of a wedding ceremony, more so in the present case, where the breakdown of the marriage was not due to the petitioner's fault. There was also no basis for the respondent to claim the rental of the apartment which was their matrimonial home. Since all household expenses during the marriage were shared between the parties, it would be inequitable for the respondent to now make claims for rental that she purportedly paid for. Also, the traditional vows of a marriage were no longer applicable today, and as such, a marriage lasts for only as long as the parties intend it to, and not necessarily upon death. Therefore, it was untenable for the

respondent to seek general damages on the basis of her expectation that the marriage contract she had entered into would be a long-lasting one (see paras 31–33, 36–38 & 41).

[Bahasa Malaysia summary

Ini adalah petisyen ('petisyen') dan petisyen silang ('petisyen silang') yang difailkan oleh suami pempetisyen dan isteri responden untuk membubarkan perkahwinan antara pihak-pihak. Petisyen tersebut difailkan atas alasan bahawa pihak-pihak telah hidup terpisah untuk jangka masa yang berterusan sekurang-kurangnya dua tahun sebelum pemfailan petisyen tersebut, sementara petisyen silang difailkan atas alasan tingkah laku pempetisyen yang dikatakan tidak munasabah. Pempetisyen, seorang jurutera, dan responden, seorang doktor, telah melangsungkan perkahwinan mereka pada 26 Jun 2015 dan mula tinggal bersama pada Februari 2016, selepas mereka menjalani upacara perkahwinan adat Hindu mereka. Mereka tidak mempunyai anak dalam perkahwinan itu. Pada 25 Oktober 2017, pempetisyen berpindah dari rumah perkahwinan mereka di pangsapuri yang disewa di Johor Bahru, dan memfailkan perceraian pada November 2019. Responden kemudian memfailkan petisyen silang tersebut pada September 2020. Isu-isu dalam petisyen ini adalah: (a) sama ada pihak-pihak telah memenuhi keperluan dua tahun untuk hidup terpisah; (b) sama ada pempetisyen telah meninggalkan responden; (c) sama ada persetubuhan tidak berlaku merupakan satu perkara yang tidak munasabah; (d) sama ada responden berhak mendapat nafkah; dan (e) sama ada responden berhak mendapatkan ganti rugi.

Diputuskan, membenarkan petisyen dan menolak petisyen silang dengan kos:

(1) Mahkamah ini berpendapat setelah meneliti 800 muka surat mesej WhatsApp antara pihak-pihak yang mana responden sendiri banyak kali telah membangkitkan topik perceraian, hujahan mengenai pengasingan tidak dapat dipertahankan. Mesej antara pihak-pihak juga menunjukkan bahawa kebanyakan pergaduhan telah dimulakan oleh responden sendiri. Memandangkan keadaan di mana pempetisyen telah pergi, ditambah dengan fakta bahawa perkahwinan tersebut tidak berlaku persetubuhan, menyebabkan hujahan bahawa pempetisyen telah diasingkan tidak dapat diterima. Malah terdapat pengasingan yang dibangkitkan oleh responden, yang membawa kepada keretakan perkahwinan tersebut (lihat perenggan 14–15).

(2) Perbualan WhatsApp antara pihak-pihak menunjukkan bahawa responden yang telah menolak sebarang bentuk keintiman dengan pempetisyen. Tambahan pula, semasa pemeriksaan balas, dia telah mengakui bahawa persetubuhan tidak berlaku disebabkan oleh penolakannya, yang berasal dari keadaan yang dikenali sebagai *dyspareunia*, dan takut untuk terlibat dalam hubungan seksual. Pendedahan keadaannya ini bukan sahaja tidak dirayu dan tidak

dibuktikan, ianya adalah percanggahan dari hujahan bahawa pempetisyen yang telah menolak untuk menyempurnakan perkahwinan tersebut. Adalah jelas bahawa responden tidak boleh bergantung kepada bukan ketidakpenyempurnaan perkahwinan sebagai alasan untuk membatalkan perkahwinan tersebut kerana keengganan untuk berbuat demikian adalah di pihaknya sendiri, bukannya pempetisyen (lihat perenggan 22–23 & 25).

(3) Pihak-pihak telah hidup bersama selama satu tahun lapan bulan sahaja. Perkahwinan tersebut belum disempurnakan melalui persetubuhan dan oleh itu, tidak menghasilkan anak. Pihak-pihak telah berkongsi kos dan perbelanjaan semasa perkahwinan dan tiada keterangan bahawa responden bergantung secara kewangan kepada pempetisyen. Responden adalah seorang doktor, bekerja dengan baik dan telah berdikari dari segi kewangan sebelum perkahwinan. Oleh itu, permohonan untuk nafkah telah ditolak (lihat perenggan 28–29).

(4) Berkenaan kos dan perbelanjaan untuk majlis pertunangan, tiada asas untuk tuntutan tersebut, kerana tidak ada pelanggaran janji untuk berkahwin, kerana pertunangan tersebut akhirnya membawa kepada perkahwinan. Berkenaan dengan kos dan perbelanjaan untuk majlis perkahwinan, adalah penting untuk diperhatikan bahawa kecuali bagi kes-kes yang melibatkan perzinaan, Akta Pembaharuan Undang-Undang tidak memperuntukkan sebarang bentuk ganti rugi, sama ada khas atau umum. Tiada keperluan undang-undang untuk pihak-pihak mengadakan majlis perkahwinan, sama ada agama atau adat. Sebarang perbelanjaan yang ditanggung untuk majlis harus dianggap sebagai hadiah kepada perkahwinan, yang bermaksud kepada kedua-dua pihak. Oleh itu, mahkamah tidak berada dalam kedudukan untuk memerintahkan mana-mana pihak untuk membayar balik yang lain untuk kos dan perbelanjaan majlis perkahwinan, lebih-lebih lagi dalam kes ini, di mana pembubaran perkahwinan tersebut bukan disebabkan oleh perbuatan pempetisyen. Tiada asas bagi responden untuk menuntut sewa pangsapuri yang merupakan rumah perkahwinan mereka. Oleh kerana semua perbelanjaan isi rumah semasa perkahwinan dikongsi antara pihak-pihak, adalah tidak adil bagi responden untuk membuat tuntutan untuk sewa yang kononnya dibayarnya. Juga, perjanjian perkahwinan secara tradisional tidak lagi berlaku hari ini, dan oleh itu, perkahwinan bertahan selagi mana pihak-pihak berhasrat untuk berkahwin, dan tidak semestinya apabila pasangan meninggal dunia. Oleh itu, responden tidak dibenarkan untuk mendapatkan ganti rugi am berdasarkan jangkaannya bahawa kontrak perkahwinan akan berkekalan (lihat perenggan 31–33, 36–38 & 41).]

Cases referred to

Ananth a/l Kalyanasundram v Nalineswari a/p Puthiran [2013] 1 LNS 252, HC (folld)

Bellinger v Bellinger [2001] EWCA Civ 1140, CA (refd)

Choong Yee Fong v Ooi Seng Keat & Anor [2006] 1 MLJ 791; [2006] 5 CLJ 144, HC (folld)

Hyde v Hyde and Woodmansee (1866) LR 1 P & D 130 (refd)

Joseph Jeganathan v Rosaline Joseph [1989] 3 MLJ 106; [1989] 1 CLJ Rep 645, HC (refd)

Pheasant v Pheasant [1972] 2 WLR 353 (refd)

RS Thanalachimi v Sundararaju a/l Mattaya [2010] MLJU 1339; [2011] 7 CLJ 197, HC (distd)

Rose v Rose [1950] 2 All ER 311, CA (refd)

Shobana a/p Perumal v Ganesh a/l Guna [2016] MLJU 1108; [2016] 3 AMR 806, HC (folld)

Thevathasan v Thevathasan [1960] MLJ 255; [1960] 1 LNS 153 (refd)

VQB v VQC [2021] SGHCF 5, HC (refd)

Wong Kim Foong (F) v Teau Ah Kau @ Chong Kwong Fatt [1998] 1 MLJ 359; [1998] 1 CLJ 358, HC (refd)

Wong Siew Boey v Lee Boon Fatt [1994] 2 SLR 115, HC (folld)

Legislation referred to

Law Reform (Marriage and Divorce) Act 1976 ss 54(1)(b), (1)(c), (1)(d), 68, 70, 77, 78, Part IV

Gooi Hsiao Leung (with Vimala Subramaniam) (Gooi & Assoc) for the petitioner husband.

NG Vinod (with Shaline Rajan) (Law Chambers of Vin Sa & Ian) for the respondent wife.

Evrol Mariette Peters JC:

INTRODUCTION

[1] This was a petition ('the petition') and cross-petition ('the cross-petition') filed respectively by the petitioner husband and respondent wife to dissolve the marriage between the parties.

[2] The petition was filed on the basis that the parties had lived apart for a continuous period of at least two years immediately prior to the filing of the petition, whilst the cross-petition was filed on the ground of the petitioner's alleged unreasonable behaviour.

THE FACTUAL BACKGROUND

[3] The petitioner, an engineer, and respondent, a doctor, had their marriage solemnised on 26 June 2015 and started living together some time in February 2016, after they had undergone their Hindu customary wedding ceremony. There were no children to the marriage.

[4] On 25 October 2017, the petitioner moved out of their matrimonial home, which was a rented apartment in Johor Bahru, and filed for divorce in November 2019. the respondent filed the cross-petition in September 2020.

[5] The petition was allowed, whilst the cross-petition was dismissed, with costs, for the following reasons.

CONTENTIONS, EVALUATION AND FINDINGS

Whether the parties had fulfilled two-year requirement of living apart

[6] The petitioner's case was rather straightforward. After more than two years of marriage, and constant bickering and arguing for one year and eight months, the petitioner, on 25 October 2017, had moved out of the matrimonial home, which was an apartment in Johor Bahru that they had rented.

[7] The petitioner filed this petition on the basis of having lived apart for more than two years, which was pursuant to s 54(1)(d) of the Law Reform (Marriage and Divorce) Act 1976 ('the Law Reform Act'), which reads:

> Section 54 Proof of breakdown
>
> (1) In its inquiry into the facts and circumstances alleged as causing or leading to the breakdown of the marriage, the court shall have regard to one or more of the following facts, that is to say —
>
> ...
>
> *(d) that the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition.* (Emphasis added.)

[8] Although the two-year separation period in itself was, on the face of it, proof of breakdown, the petitioner testified to the circumstances which led to him leaving the marriage.

[9] It was undisputed that the respondent was extremely unhappy, and had claimed that her relationship with the petitioner had lacked chemistry. As a

A result of her unhappiness, the respondent had, on innumerable occasions, informed the petitioner that she had made a mistake and that she wanted a divorce.

B **[10]** I found the petitioner to be a convincing witness in his narrative of what had led to the breakdown. He was direct, and struck me as a truthful person. He did not fault the respondent entirely, but explained that with the constant arguments between the parties, he felt that divorce would be the best option.

C **[11]** It was no surprise, therefore, that the petitioner had left the matrimonial home and filed for divorce, as the marriage had undeniably and irretrievably broken down.

Whether the petitioner had deserted the respondent

D

[12] The respondent, on the other hand, had cross-petitioned for divorce on grounds of unreasonable behaviour of the petitioner, and that he had deserted the respondent, pursuant to paras (b) and (c) respectively of s 54(1) of the Law Reform Act, which read:

E

> Section 54 — Proof of breakdown
>
> (1) In its inquiry into the facts and circumstances alleged as causing or leading to the breakdown of the marriage, the court shall have regard to one or more of the following facts, that is to say —
>
> F
>
> ...
>
> (b) that the respondent has *behaved in such a way* that the petitioner *cannot reasonably be expected to live* with the respondent;
>
> (c) that the *respondent has deserted the petitioner for a continuous period of at least two years* immediately preceding the presentation of the petition;
>
> G
>
> ... (Emphasis added.)

[13] The respondent claimed that the petitioner, by leaving the matrimonial H home had deserted her.

[14] In my view, especially after having perused the 800 pages of *WhatsApp* messages between the parties, and the numerous times the respondent herself had raised the topic of divorce, her contention on desertion was untenable.

I

[15] The messages between the parties also indicated that most of the arguments were initiated by the respondent herself. Considering the circumstances in which the petitioner had left, coupled with the fact that the marriage had not been consummated, in my view there could not have been

desertion by the petitioner. In fact, if at all, there was constructive desertion by the respondent, that led to the breakdown of the marriage. A

[16] The issue of constructive desertion was adverted to in the landmark case of *Pheasant v Pheasant* [1972] 2 WLR 353, where Ormrod J had explained in the following passage: B

> All these considerations point to only one conclusion, namely, that the test to be applied under sub-paragraph (b) is closely similar to, but not necessarily identical with, that which was formerly used in relation to constructive desertion. I would not wish to see carried over into the new law all the technicalities which accumulated round the idea of constructive desertion but rather to use the broader approach indicated by Pearce J in *Lissack v Lissack* [1951] P1 and consider *whether it is reasonable to expect this petitioner to put up with the behaviour of this respondent bearing in mind the characters and the difficulties of each of them, trying to be fair to both of them, and expecting neither heroic virtue or selfless abnegation from either*. It would be consistent with the spirit of the new legislation if this problem were now to be approached more from the point of view of breach of obligation than in terms of the now out-moded idea of the matrimonial offence. (Emphasis added.) C D

[17] Reference was made also to the case of *Joseph Jeganathan v Rosaline Joseph* [1989] 3 MLJ 106; [1989] 1 CLJ Rep 645, where the court held that the proper test to be adopted is whether a right-thinking man, in all the circumstances, would conclude that the respondent had behaved in such a way that the petitioning spouse could not reasonably be expected to live with the respondent. In doing so, the court has to consider the circumstances holistically, including the characters and personalities of the parties. E F

[18] I also found instructive the case of *Wong Siew Boey v Lee Boon Fatt* [1994] 2 SLR 115, where it was held that the court must look at the behaviour of the parties by considering its cumulative effect, which includes active or passive conduct. The behaviour is not confined to behaviour towards the spouse but may have relevance to the marriage even if it is towards other members of the family or outsiders. All types of behaviour may be considered, including omissions, where it has reference to the marriage. G H

[19] In the present case, the respondent was unhappy from the very beginning of this union. It was obvious that she had unrealistic expectations of a marriage and constantly complained of being bored, depressed, unhappy, disinterested and felt a lack of chemistry between herself and the petitioner. She had also subjected the petitioner to verbal and emotional abuse, which in my view was just as aggravating as physical abuse or even adultery, for that matter. Her words to him such as 'I want to split', 'I can find a better person', 'useless' I

A and even 'barbaric baboon' were condescending and uncivil. The petitioner, of course, was not blameless, but his responses were a reaction to the respondent's harsh words.

B **[20]** The respondent justified her *WhatsApp* messages by saying that she had not meant what she had said, and that her conduct was common between couples, and part and parcel of the vicissitudes of a marriage. I, however, have to disagree with such proposition for the following reasons. First and foremost, being married is not a *carte blanche* to treat one's spouse disrespectfully. Although there is no denying that in most marriages, spats are not uncommon, C spouses should nevertheless be more deferential of each other. Secondly, everyone has limits, no matter how patient one is. In the present case, the constant barrage of name-calling was, in my view, more frequent than the usual bickering in a marriage. No one, man or woman, should be subject to such constant tirade of verbal abuse. The petitioner had every right to leave the D marriage, and if anyone should have complained of desertion, it should have been the petitioner, for constructive desertion, more so since there was no consummation of the marriage.

E *Whether non-consummation amounted to unreasonable behaviour*

[21] The issue of non-consummation was raised by the respondent in the cross-petition as the ground for the unreasonable behaviour, based on her averment that petitioner had refused to consummate the marriage.

F

[22] I found this rather baffling, as the *WhatsApp* messages between the parties indicated that it was the respondent who had refused any form of intimacy with the petitioner. Furthermore, during cross-examination, she had admitted that the non-consummation was due to her refusal, emanating from G a condition known as dyspareunia, that she claimed she had suffered from, and was therefore afraid to engage in sexual intercourse.

[23] This revelation of her condition was not only not pleaded and not proved, it was a contradiction of what she had maintained all along, that is, it H was the petitioner who had refused to consummate the marriage. This was most injudicious on the part of the respondent, and her credibility was compromised by the contradiction between her testimony in court and what she had pleaded. In fact, the respondent's version of how the marriage had broken down was generally unconvincing and, in my view, based on both oral I and documentary evidence, her conduct was far from decorous.

[24] Furthermore, if non-consummation of the marriage was a genuine ground that the respondent had intended to rely upon, it begs the question why she had not applied to have the marriage annulled pursuant to ss 68 and 70 of

the Law Reform Act, which read:

> Section 68 Petition for nullity of marriage
>
> Any husband or wife may present a petition to the court praying for a decree of nullity in respect of his or her marriage.
>
> Section 70 Grounds on which a marriage is voidable
>
> A marriage which takes place after the appointed date shall be voidable on the following grounds only, that is to say —
>
> (a) that the marriage has not been consummated owing to the incapacity of either party to consummate it;
>
> (b) *that the marriage has not been consummated owing to the wilful refusal of the respondent to consummate it;*
>
> (c) that either party to the marriage did not validly consent to it, whether in consequence of duress, mistake, unsoundness of mind or otherwise;
>
> (d) that at the time of the marriage either party, though capable of giving a valid consent, was (whether continuously or intermittently) a mentally disordered person within the meaning of the Mental Disorders Ordinance 1952 of such a kind or to such an extent as to be unfit for marriage;
>
> (e) that at the time of the marriage the respondent was suffering from venereal disease in a communicable form;
>
> (f) that at the time of the marriage the respondent was pregnant by some person other than the petitioner. (Emphasis added.)

[25] This revelation had also displayed a lack of bona fide on the part of the respondent. It was obvious that it was not open for the respondent to rely on non-consummation as a ground to annul the marriage because the refusal to do so was on her part, and not the petitioner's.

[26] The respondent's reliance on the ground of unreasonable behaviour of the petitioner, therefore, was bereft of merit.

Whether the respondent was entitled to maintenance

[27] The respondent claimed for maintenance from the petitioner in the monthly amount of RM2,500. In determining the issue of maintenance, reference was made to ss 77 and 78 of the Law Reform Act, which read:

> Section 77 Power for court to order maintenance of spouse
>
> (1) the court may *order a man to pay maintenance to his wife* or former wife —
>
> (a) during the course of any matrimonial proceedings;

(b) *when granting or subsequent to the grant of a decree of divorce or judicial separation*;

(c) if, after a decree declaring her presumed to be dead, she is found to be alive.

(2) the court shall have the corresponding power to order a woman to pay maintenance to her husband or former husband where he is incapacitated, wholly or partially, from earning a livelihood by reason of mental or physical injury or ill-health, and the court is satisfied that having regard to her means it is reasonable so to order.

Section 78 — Assessment of maintenance

In determining the amount of any maintenance to be paid by a man to his wife or former wife or by a woman to her husband or former husband, the court shall base its assessment primarily on *the means and needs of the parties*, regardless of the proportion such maintenance bears to the income of the husband or wife as the case may be, but shall have regard to the degree of responsibility which the court apportions to each party for the breakdown of the marriage. (Emphasis added.)

[28] In the present case, the parties had lived together for one year and eight months only. Furthermore, the marriage had not been consummated and as such, did not produce any children. The parties had shared costs and expenses during the marriage and there was no evidence that the respondent was financially dependent on the petitioner. The respondent is a doctor, gainfully employed and had been financially independent even before the marriage. I was, therefore, guided by the case of *Choong Yee Fong v Ooi Seng Keat & Anor* [2006] 1 MLJ 791; [2006] 5 CLJ 144, where the wife's application for maintenance was dismissed on the ground that she was financially independent and capable of supporting herself. In adopting the English case of *Rose v Rose* [1950] 2 All ER 311, and Singapore case of *Thevathasan v Thevathasan* [1960] MLJ 255; [1960] 1 LNS 153, it was elucidated by Faiza Tamby Chik J, in the following passage:

The petitioner has been at all material time gainfully employed. The petitioner is not in a situation where she is incapable of supporting herself but rather a case where there is an able-bodied petitioner who refuses to seek employment in order to claim for maintenance from the respondent. This refusal to be self-supportive is further proven by the petitioner herself whereby despite of her alleged tight financial situation, the petitioner has shown total lack of initiative in mitigating her financial woes but has instead went on a spending spree as evidenced by her indiscriminate use of credit cards facilities which according to the petitioner's averment at para 12(a) and (b) of encl 76 amounts to a total sum of RM114,668.64. The potential earning power of the claimant must also be considered. (Emphasis added.)

[29] As such I had to dismissed the respondent's claim for maintenance.

Whether the respondent was entitled to damages

[30] In the cross-petition, the respondent claimed for both general and special damages. Her claim for special damages was based on costs and expenses incurred for the engagement and wedding ceremonies, as well as rental for the matrimonial home.

[31] In the case of costs and expenses for the engagement ceremony, there was no basis for such claim, as there was no breach of promise to marry, as the engagement had led eventually to the marriage.

[32] With regard to the costs and expenses for the wedding ceremony, it was pertinent to note that except for cases involving adultery, the Law Reform Act does not provide for any form of damages, whether special or general. On this note, I drew guidance from the cases of *Ananth a/l Kalyanasundram v Nalineswari a/p Puthiran* [2013] 1 LNS 252 and *Shobana a/p Perumal v Ganesh a/l Guna* [2016] MLJU 1108; [2016] 3 AMR 806.

[33] In fact, the validity of a marriage pursuant to the Law Reform Act is marked by its registration, as provided for in Part IV of the Law Reform Act. There is no legal requirement for parties to have a wedding ceremony, be it religious or customary. Any expenses borne for a ceremony should be considered a gift to the marriage, which means to both parties. As such, the court was not in a position to order any party to reimburse the other for costs and expense of a wedding ceremony, more so in the present case, where the breakdown of the marriage was not due to the petitioner's fault.

[34] The respondent relied on the case of *RS Thanalachimi v Sundararaju a/l Mattaya* [2010] MLJU 1339; [2011] 7 CLJ 197 to argue that her claim for special damages should be allowed. In my view, however, the case of *RS Thanalachimi v Sundararaju Mattaya* is distinguishable as in that case, the claim was for breach of promise to marry. In the present case, the marriage had been registered and the respondent had cross-petitioned for divorce. As such, there was no basis for this court to award special damages.

[35] In any event, it was undisputed that the costs and expenses for the engagement and wedding ceremonies were borne by the father of the respondent, who was not a party to these proceedings. As such, there was no basis for the respondent to claim for the same.

[36] There was also no basis for the respondent to claim the rental of the apartment which was their matrimonial home. It was rental for a home that they both had shared for at least one year and eight months. Since all household

A expenses during the marriage were shared between the parties, it would be inequitable for the respondent to now make claims for rental that she purportedly paid for.

B **[37]** The respondent contended that her claim for general damages was also based on the premise that the petitioner had breached the marriage contract, after having being given the guarantee that the marriage would last.

C **[38]** In my view, this argument was bereft of merit. It would naturally be ideal if marriages lasted forever. However, the traditional vows of a marriage are no longer applicable today, and as such, a marriage lasts for only as long as the parties intend it to, and not necessarily upon death. Furthermore, there was no evidence that the petitioner had given the respondent such guarantee.

D **[39]** At this juncture, it is apt to be reminded that although a marriage was traditionally described in *Hyde v Hyde and Woodmansee* (1866) LR 1 P & D 130, as 'the voluntary union for life of one man and one woman to the exclusion of all others', the more contemporary definition may be found in *Bellinger v Bellinger* [2001] EWCA Civ 1140, where Thorpe LJ described
E marriage as 'a contract for which the parties elect but which is regulated by the state, both in its formation and in its termination by divorce, because it affects status upon which depend a variety of entitlements, benefits and obligations'.

F **[40]** Having said that, it is crucial to note that although a marriage is a contract, it has to be differentiated from other commercial contracts. The dissimilarities were distilled by Abdul Malik Ishak J (as he then was) in the case of *Wong Kim Foong (F) v Teau Ah Kau @ Chong Kwong Fatt* [1998] 1 MLJ 359; [1998] 1 CLJ 358, in the following passages:

G > But a marriage contract is quite unlike a commercial contract and there are marked dissimilarities between the two. Of pertinence to note would be the following dissimilarities:
>
> (1) Special formalities are needed and must be fulfilled before a marriage vow is exchanged between the parties.
>
> H (2) The law relating to capacity to marry is entirely different from that of, say, the sale of goods.
>
> (3) What are said to be void and voidable in a marriage can never be the same for other contracts.
>
> I (4) A voidable marriage cannot be declared *void ab initio* by repudiation by one of the parties but it may be set aside by a decree of nullity pronounced by a divorce court.
>
> (5) A marriage once contracted cannot be discharged by agreement, frustration or breach.

[41] It was, therefore, untenable for the respondent to seek general damages on the basis of her expectation that the marriage contract she had entered into would be a long-lasting one.

CONCLUSION

[42] In the present case, both petitioner and respondent admitted that they had made a colossal mistake in getting married. The respondent, especially, had entered into the marriage with rose-tinted glasses and unrealistic expectations. Little did she realise that marriage is a partnership, that is, a contract which parties have obligations to fulfil and duties to perform.

[43] The respondent found herself in a marriage that was devoid of the excitement and adrenaline rush she had expected. Instead she went through the partnership with dull, dread and doom. Her husband was not the knight in shining armour that she thought he was. However, regardless of the want of love or passion, the marriage was not any less valid, as love is not and has never been a legal prerequisite to marriage. At this juncture, I found it apt to quote a passage from the Singapore case of *VQB v VQC* [2021] SGHCF 5, where it was aptly described by Choo Han Teck J:

> Dean Martin and Frank Sinatra once said, or rather, sang, that love and marriage go together like a horse and carriage — you can't have one without the other. The appellant probably knows otherwise now, that the truth about love and marriage is not with Martin and Sinatra, but in a Venn diagram — *there can be love without marriage, just as there can be marriage without love, and of course, there is also the ideal state of love in marriage*. (Emphasis added.)

[44] In the present case, since the parties felt trapped, and had reached a point of no return, it was my view that they should move forward and each should start on their respective clean slates.

[45] In the upshot, therefore, and based on the aforesaid reasons, and after careful scrutiny and judicious consideration of all the evidence before this court, and written and oral submissions of both parties, the petition was allowed whilst the cross-petition was dismissed, with costs.

Petition allowed; and cross-petition dismissed with costs.

Reported by Muhamad Azham Marwan